IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1068 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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REVABEN BHAGAJI BARIYA & 2 - Appellant(s)
Versus
TALSAJI MEGHAJI MARWADI & 2 - Defendant(s)

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Appearance :
MR RN SHAH for Appellant(s) : 1 - 3.
None for Defendant(s) : 1, 3,
MR HR LATHIGARA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and award of the Motor Accident Claims Tribunal, Himmatnagar passed in M.A.C.P. No.391 of 1983 dated 23.07.1985 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 13.06.1983, when deceased Gamaji was on the road leading to the fields in the sim of village 'Malli' of Malpur Taluka, he was run over by a truck driven by present opponent No.1 and owned by present opponent No.2. On account of the said accident

Gamaji expired on the spot. Therefore, present appellants being heirs and legal representatives of the deceased preferred a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Counsel for the appellants and opponent No.3. Though, served none appears on behalf of the opponent Nos. 1 and 2. It is not in dispute that deceased-Gamaji lost his life on account of the accident caused by the truck driven by opponent No.1.

3.1 On perusal of the F.I.R. (Exh.15) which was filed by the brother of the deceased Laxmanji, it transpires that on the day of incident Laxmanji along with his deceased brother-Gamaji had gone to the field of Madhaji Magaji to unload the manure carted in the truck involved in the accident in question and after unloading the manure when opponent No.1 drove the truck in reverse, his brother was ran over by it.

3.2 Before proceeding with the matter it would be relevant to refer to a decision of this Court passed in the case of ***"Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja & Ors."*** reported in 1981 (22) GLR 1161 wherein at Para-8 it was held as under,

> "A combined reading of sec.95(1)(b)(i) and sec.96(1) of the Motor Vehicles Act clearly shows that the statutory provisions enjoin the insurance company to compulsorily cover the risks of accident caused to third parties out of the user of the motor vehicle in a public place, subject of course, to cover all limits of liability in respect of any one accident as provided by sec.95(2). It is, therefore, apparent that **before the insurance company can be satisfactorily made liable to make good the claim of parties, put, forward on account of the accidental injuries caused to third parties, it has to be shown that death or bodily injuries to any persons or third party was caused by or arising out of the use of the vehicle *in a public place.*** If the death or bodily injury to third party is caused by use of the vehicle at a place which was not a public place, statutory requirements of sec. 96(1)(b)(i) to cover such risk would not arise at all. It is clear that before an insurance company can be satisfactorily made liable to answer claim for damages arising out of the accidental injuries caused to a third party on account of the use of the insured vehicle, it must be shown that the vehicle was driven in a rash or negligent manner in a public place or the root cause of the accident must have originated during the time when the vehicle was used in a public place and if that fact is established, the further question

> whether such rash or negligent act may have injured innocent third party, at a place which may not be a public place, would not be strictly relevant for the purpose of deciding the statutory liability of the Insurance company for covering such risk of accident."

3.3 In the case on hand, on perusal of F.I.R. Filed by one Laxmanji brother of the deceased-Gamaji, it clearly transpires that when Laxmanji along with his deceased brother-Gamaji had gone to field of one Madhaji Magaji to unload the manure carted in the truck, the accident in question took place. Hence, in view of the fact that the accident in question had taken place at a private place and in view of the decision of this Court in the case of ***"Oriental Fire and General Insurance Co. Ltd."***(Supra)the Tribunal is justified in exonerating the opponent No.3-Insurance Company from the liability to pay compensation.

3.4 Here, it may be noted that opponent No.1-driver and opponent No.2-owner had neither appeared before the Tribunal nor had led any evidence. I am, therefore, in complete agreement with the view taken by the Tribunal that the accident in question took place on account of the sole negligence on the part

of the opponent No.1, and hence, the appellants are entitled for compensation.

3.5 I am, therefore, in complete agreement with the reasoning given and findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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